



# CITY OF DECATUR, TEXAS

Development Services ★ 1601 S. State Street ★ Decatur, TX 76234 ★ (940) 393-0250 voice ★ (940) 626-4629 fax

## AGENDA

### (Zoning) Board of Adjustment Meeting

Monday, April 16, 2018 at 3:30 P.M.

City Hall Council Chamber

201 E. Walnut

Decatur Texas 76234

#### Call to Order

**ITEM 1:** Approval of December 18, 2017 Minutes.

**ITEM 2:** **ZBA2018-01**—The Board to consider and take action on Mrs. Beth McCurdy's request for a variance from the City of Decatur's Zoning Ordinance regarding front yard setback. Specifically, applicant is requesting a variance to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.11 "C-2, Thoroughfare Business District," Item D(1)(a) "Area Regulations for Nonresidential Uses," to reduce the required front yard setback of twenty-five feet (25') to fifteen feet (15'), a reduction of ten feet (10') along west Brady Street. The subject property is proposed as Lot 3R, Block 16, Range C, Devereux Addition and is more commonly referred to as 401 S. Washburn St., City of Decatur, Wise County, Texas.

**ITEM 3:** **ZBA2018-03**—The Board to consider and take action on Mr. Buddy Miller's request, on behalf of Mr. Todd Burger, for a special exception from the City of Decatur's Zoning Ordinance regarding residential front yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.3 "SF-2, Single-Family Residential District," Item D(1)(b)(c) "Area Regulations," to reduce the required front yard setback twenty-five feet (25') to sixteen and two-tenths feet (16.2'), a reduction of eight and eight-tenths feet (8.8') along S. Hatcher Street at the northeast intersection of Hatcher and East Park Street. The subject property is proposed as Lot 3A, Block 76, South Decatur Addition and is more commonly referred to as 1303 S. Hatcher St., City of Decatur, Wise County, Texas.

**ITEM 4:** New and/or future business items.

#### Adjournment

Prepared and posted this 12<sup>th</sup> day of April 2018 in accordance with Chapter 551, Texas Government Code.

Dedra D. Ragland, AICP  
Director of Planning and Development

\*NOTE: THE (ZONING) BOARD OF ADJUSTMENT RESERVES THE RIGHT TO ADJOURN INTO A CLOSED MEETING AT ANY TIME REGARDING ANY ITEM ON THE AGENDA FOR WHICH IT IS LEGALLY PERMISSIBLE **UNDER THE TEXAS OPEN MEETINGS ACT PURSUANT TO LGC 551.071.**

**MINUTES  
(ZONING) BOARD OF ADJUSTMENT MEETING  
Monday, December 18, 2017 at 3:30 P.M.  
City Hall Council Chambers  
201 E. Walnut**

A meeting of the City of Decatur (Zoning) Board of Adjustment was held at 3:30 p.m. on December 18, 2017, at City Hall with the following in attendance:

**MEMBERS PRESENT:**

Mark Duncum Chairman  
Will Klose Vice-Chairman  
Murvelle Chandler (Alternate)  
Dennis McCreary (Alternate)  
Wayne Stone (Alternate)

**MEMBERS ABSENT:**

Lisa Caraway

Others present were: Planning Director Dedra Ragland, Legal Counsel Patricia Adams, City Engineer Earl Smith and Development Review Coordinator Shanna Smith, representing the staff; and Christina Castillo and Karena Martinez, representing the applicant.

**Call to Order: Chairman Duncum called the meeting to order at 3:32 p.m.**

**ITEM 1:** Administer Statement of Appointed Official and Oath of Office to Mark Duncum.

**Development Review Coordinator, Shanna Smith, administered Statement of Appointed Official and Oath of Office to Board Member Mark Duncum.**

**ITEM 2:** Approval of October 16, 2017 Minutes.

**Vice-Chairman Klose made a motion to approve the October 16, 2017 Minutes. Alternate Board Member Chandler seconded the motion. The motion passed 5-0.**

**ITEM 3:** **ZBA2017-10**—The Board to consider and take action on Ms. Pricilla Davidson’s request, on behalf of IHOP, for a variance from the City of Decatur’s Zoning Ordinance regarding front yard setback. Specifically, applicant is requesting a variance to the City of Decatur Code of Ordinances, Appendix B. “Zoning,” Article 5. “Zoning Districts,” Section 5.1 “Zoning Districts Established,” Subsection 5.1.11 “C-2, Thoroughfare Business District,” Item D(1)(a) “Area Regulations for Nonresidential Uses” to reduce the required front yard setback of twenty-five feet (25’) to nine feet (9’), a variance of sixteen feet (16’) along the frontage road of US Hwy 81-287. The subject property is the International House of Pancakes Addition and is more commonly referred to as 801 S. Hwy 81-287, City of Decatur, Wise County, Texas.

Planning Director Ragland presented the staff findings. She stated the pole sign located in the 25’ setback was administratively approved by the City Manager several years ago. Planning Director Ragland is unsure if the administrative approval was done correctly and this variance will ensure that the pole sign will be in legal compliance with the current zoning ordinance and sign regulations from this point forward. Thirteen (13) property owners were notified with one response received in opposition to the request. Planning Director Ragland explained the opposition expressed concerns over IHOP expanding and the possible loss of parking spaces and not for the setback.

Chairman Duncum asked if the pole sign in question or any other pole sign, has to be placed outside the 25’ building line.

Planning Director Ragland answered, yes. This area is supposed to be unoccupied.

**From the evidence, testimony and plans presented, Alternate Board Member Stone moved that the Board grant the variance request ZBA2017-10 to reduce the required front yard setback of twenty-five feet (25') to nine feet (9'), a variance of sixteen (16') along the frontage road of US Hwy 81-287. The subject property is the International House of Pancakes Addition and is more commonly referred to as 801 S. Hwy 81-287, City of Decatur, Wise County, Texas. Alternate Board Member McCreary seconded the motion. The motion passed 5-0.**

**ITEM 4:** Discuss and approve 2018 Meeting Schedule.

**Vice-Chairman Klose made a motion to approve the 2018 Meeting Schedule. Alternate Board Member Chandler seconded the motion. The motion passed 5-0.**

**ITEM 5:** New and/or future business items.

Planning Director Ragland informed the Board the submittal deadline is Thursday, December 21, 2017, and there is possibly one case for the January 17, 2018, meeting. A potential applicant has been in contact with Planning Director Ragland to seek a variance for the parking requirement for the development of the property across from Lowe's. The prospective business is Orscheln Home and Ranch. The developer may seek the variance to reduce the cost of concrete for the parking requirement.

Chairman Duncum asked if the applicant has already submitted an application.

Planning Director Ragland answered, no but they have been speaking to staff.

Vice-Chairman Klose commented he hoped the new business would not take up parking to display items as Tractor Supply has done.

Planning Director Ragland explained Tractor Supply expanded into the parking lot without the knowledge of City staff. The Orscheln folks will be encouraged to not walk in Tractor Supply's footsteps.

**The meeting was adjourned at 3:46 p.m. by Chairman Duncum.**

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J. Mark Duncum, Chairman

**ATTEST:**

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Dedra Denée Ragland, Planning Director



# CITY OF DECATUR, TEXAS

Development Services ★ 1601 S. State Street ★ Decatur, TX 76234 ★ (940) 393-0250 voice ★ (940) 626-4629 fax

## STAFF REPORT

*April 16, 2018 – Board of Adjustment Meeting*

**TO: (Zoning) Board of Adjustment**                      **CASE: ZBA2018-01**  
**FROM: Dedra D. Ragland, AICP, Planning Director**   **APPLICANT: Beth McCurdy**  
**DATE: March 29, 2018**                      **REQUEST: Front Yard Setback 401 S. Washburn**

### Subject:

Board to hear public input and consider taking action on a request from Mrs. Beth McCurdy for a variance from the City of Decatur's Zoning Ordinance regarding front yard setback. Specifically, applicant is requesting a variance to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.11 "C-2, Thoroughfare Business District," Item D(1)(a) "Area Regulations for Nonresidential Uses," to reduce the required front yard setback of twenty-five feet (25') to fifteen feet (15'), a reduction of ten feet (10') along west Brady Street. The subject property is proposed as Lot 3R, Block 16, Range C, Devereux Addition and is more commonly referred to as 401 S. Washburn St., City of Decatur, Wise County, Texas.

### Case Notes:

On February 20, 2018, Mrs. Beth McCurdy met with City staff to discuss platting and variance procedures for the property located at 401 S. Washburn St. Mrs. Beth McCurdy's future tenant, Livingston Hearing Aide Center, submitted for a building permit and it was discovered the property is not properly platted. The building straddles two lots; the lots will need to be replatted as one lot. Upon review of the site plan, it was also discovered that the existing building does not meet the City's front yard setback requirements. The applicant is requesting that the required twenty-five feet (25') minimum front yard setback be reduced to fifteen feet (15'), a reduction of ten feet (10').

### Legality:

According to the Texas Local Government Code, the Board of Adjustment can legally authorize variations to the Zoning Ordinance subject to the conditions listed below (§211.008 010). Each case before the board must be heard by 75 percent of its members (§211.008.d), and the board can only authorize a variation from the terms of the Zoning Ordinance with a concurring vote of 75 percent (§211.009.c).

### Conditions for Approval:

The applicant must meet all of the following four conditions to be legally granted a variance.

#### Financial or self-induced hardship cannot be considered:

1. The requested variance does not violate the intent and spirit of the ordinance.
2. Special conditions of restricted area, shape, topography or physical features exist that are peculiar to the subject parcel and are not applicable to other parcels of land in the same zoning district.
3. The hardship is not the result of the applicant's actions, and
4. The interpretation of the provisions in this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions.

### Deciding Factors:

**The Board of Adjustment reviews the application and the response to the four conditions, and then hears the case to determine if the applicant qualifies. If the Board feels the applicant has met the stated conditions, then the Board may approve the variation as long as it meets these criteria (§211.009.a.3):**

- 1) The variation is not contrary to the public interest.
- 2) The variation is due to special conditions.
- 3) A literal enforcement of the ordinance would result in unnecessary hardship.
- 4) The spirit of the ordinance is observed and substantial justice is done.

**Recommendation:**

***Staff has the following finding:***

1. The requested variance **does not** violate the intent and spirit of the ordinance. The building has been in existence since 1970 in the current configuration and location without objection or concern from the surrounding neighbors. Reduced setback does not adversely impact surrounding property owners.
2. There **are** special considerations of physical features that are peculiar to the subject parcel that are not applicable to other parcels of land in the same zoning district. The property is a corner lot, which requires that both frontages be treated as front yards, with a 25' setback per the current zoning regulations. The building has been in existence since the 1970s and prior to the adoption of any zoning regulations, with a 15' setback along Brady St. The building cannot be relocated. If the property cannot be properly replatted, no further building permits can be issued. This may hinder any new tenants or occupants from leasing space in this building.
3. The hardship **is not** a result of the applicant's action. The building was built in 1970 prior to the adoption of the current zoning regulations.
4. The interpretation of the provisions in this ordinance **could** deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions. Before any additional permits can be issued, the property must be properly platted. Before the property can be platted, the building encroachment in the setback must be resolved.

Thirteen (13) property owners were notified. Staff has received no responses in favor of, opposed to or neutral to the request.

**Options:**

**Recommend approval:**

From the evidence, testimony and plans presented, I move that the Board grant the request ZBA2018-01 to allow a variance to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.11 "C-2, Thoroughfare Business District," Item D(1)(a) "Area Regulations for Nonresidential Uses," to reduce the required front yard setback of twenty-five feet (25') to fifteen feet (15'), a reduction of ten feet (10') along west Brady Street. The subject property is proposed as Lot 3R, Block 16, Range C, Devereux Addition and is more commonly referred to as 401 S. Washburn St., City of Decatur, Wise County, Texas.

**Recommend approval with conditions:**

From the evidence, testimony and plans presented, I move that the Board grant the request ZBA2018-01 to allow a variance to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.11 "C-2, Thoroughfare Business District," Item D(1)(a) "Area Regulations for Nonresidential Uses," to reduce the required front yard setback of twenty-five feet (25') to fifteen feet (15'), a reduction of ten feet (10') along west Brady Street. The subject property is proposed as Lot 3R, Block 16, Range C, Devereux Addition and is more commonly referred to as 401 S. Washburn St., City of Decatur, Wise County, Texas. The conditions being as follows:...

**Recommend denial:**

From the evidence, testimony and plans presented, I move that the Board deny the request ZBA2018-01 to allow a variance to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.11 "C-2, Thoroughfare Business District," Item D(1)(a) "Area Regulations for Nonresidential Uses," to reduce the required front yard setback of twenty-five

feet (25') to fifteen feet (15'), a reduction of ten feet (10') along west Brady Street. The subject property is proposed as Lot 3R, Block 16, Range C, Devereux Addition and is more commonly referred to as 401 S. Washburn St., City of Decatur, Wise County, Texas. Denial is based on the following findings:...

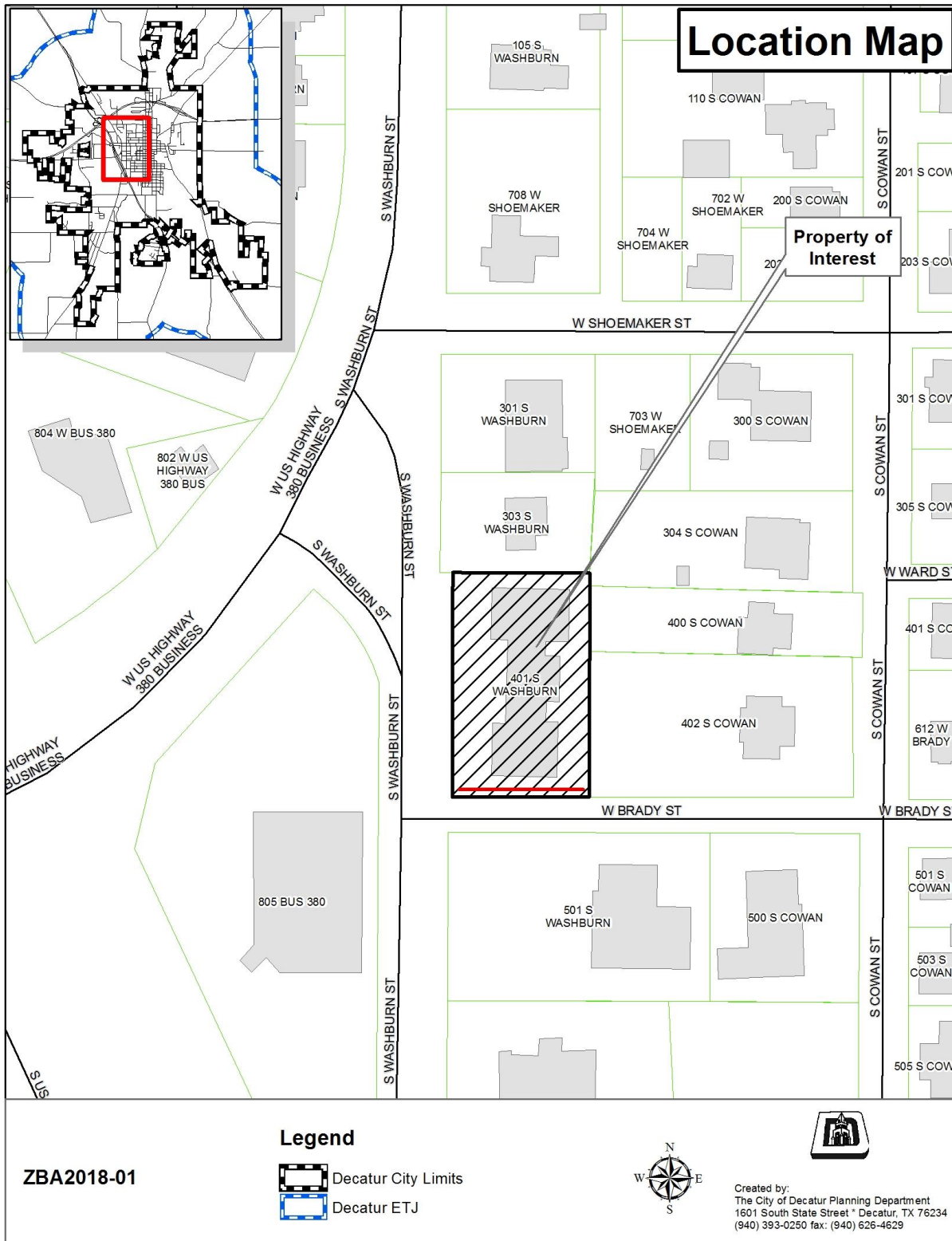
Recommend postponing consideration:

From the evidence, testimony and plans presented, I move that the Board postpone consideration of request to a date certain, and requesting additional information for the request ZBA2018-01 to allow a variance to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.11 "C-2, Thoroughfare Business District," Item D(1)(a) "Area Regulations for Nonresidential Uses," to reduce the required front yard setback of twenty-five feet (25') to fifteen feet (15'), a reduction of ten feet (10') along west Brady Street. The subject property is proposed as Lot 3R, Block 16, Range C, Devereux Addition and is more commonly referred to as 401 S. Washburn St., City of Decatur, Wise County, Texas. Additional data being as follows:...

**Attachments**

1. Location Map
2. Application, Checklist and Letter of Intent
3. Proposed Plat Exhibit
4. 200' Property Owner Notification Map and Responses
5. Memo from City Engineer

Attachment 1  
**Location Map**





# Application, Checklist and Letter of Intent

**CITY OF DECATUR DEVELOPMENT SERVICES UNIVERSAL APPLICATION**

Check box to indicate application type *Incomplete applications will be rejected*

<input type="checkbox"/> Annexation Petition	<input type="checkbox"/> Gas Well Development Plat	<input type="checkbox"/> Special Use Permit
<input type="checkbox"/> Amending Plat	<input type="checkbox"/> Plat Extension-Final or Preliminary	<input type="checkbox"/> Subdivision Variance
<input type="checkbox"/> Comprehensive Plan Amendment	<input type="checkbox"/> Preliminary Plat	<input type="checkbox"/> Zoning Change
<input type="checkbox"/> Conveyance Instrument	<input type="checkbox"/> Replat	<input type="checkbox"/> Zoning Variance (ZBA)
<input type="checkbox"/> Design Standards Variance	<input type="checkbox"/> ROW Use Agreement	<input type="checkbox"/> Vacation Plat
<input type="checkbox"/> Final Plat	<input type="checkbox"/> ROW Abandonment/ Closing	<input type="checkbox"/> Other _____

**Application Requirements:** Signed application form, application fees, copy and filing fees, Proof of Ownership (Recorded Deed or current tax statements), required # of plats / plans, signed checklist and a PDF of all documentation.

**PROJECT INFORMATION:** ☐ Residential ☒ Commercial Is this property platted? ☒ Yes ☐ No

Project Name: McCurdy Washburn Center Total Acres: 0.627

Project Address (Location): 401 S Washburn Parcel(s) Tax ID R #: R20000 25093

(LOT, BLOCK & SUBDIVISION OR SURVEY WITH METES & BOUNDS DESCRIPTION, SEALED BY A LICENSED SURVEYOR)

Parent Project Name/Number: \_\_\_\_\_ Parcel(s) Tax ID GEO #: \_\_\_\_\_

Brief Description of Project: Re-Plat per City of Decatur ETJ ☐ Yes

**Please state the identity of any individual(s), or other entities that presently hold a lien upon the real estate which is the subject of this request:** \_\_\_\_\_ *Lien holder/mortgagee must also sign plat for filing of record.*

Existing Use: com Existing Zoning: C-2 # of Existing Lots: 2 # of Existing Units: 1

Proposed Use: ✓ Proposed Zoning: ✓ # of Proposed Lots: 1 Proposed Units: 1

**APPLICANT INFORMATION:** Please circle your preferred method of contact.

Applicant / Company: McCurdy Food and Seed Inc Email: bethmcl234@yahoo.com

Address: 178 Fairview Ct Phone: 940-393-3309 Fax: \_\_\_\_\_

City: Decatur State: TX Zip: 76234

Property Owner: McCurdy Food and Seed Inc Email: bethmcl234@yahoo.com

Address: 178 Fairview Ct Phone: 940-393-3309 Fax: \_\_\_\_\_

City: Decatur State: TX Zip: 76234

Key Contact/Company: Beth McCurdy Email: bethmcl234@yahoo.com

Address: 178 Fairview Ct Phone: 940-393-3309 Fax: \_\_\_\_\_

City: Decatur State: TX Zip: 76234

**(MUST BE SIGNED FOR ALL APPLICATIONS)** - Letter of authorization required if signature is other than property owner and a letter of authorization is required from lienholder/mortgagee, if applicable.

I hereby certify that I am the owner of the property identified in this application; or, that I am the authorized agent of the owner of said property; and that I am authorized to act in their behalf, and that this application, to the best of my knowledge and belief, is true and correct.

[Signature] Legend Bank

SIGNATURE OF PROPERTY OWNER SIGNATURE OF LIEN HOLDER

**PLAT WAIVER (MUST BE SIGNED FOR ALL PRELIMINARY, FINAL & REPLATS)**

I waive the statutory time limits in accordance with Section 212 of the Texas Local Government Code.

[Signature] Legend Bank

SIGNATURE OF PROPERTY OWNER SIGNATURE OF LIEN HOLDER

Known to me to be the person(s) whose name is subscribed to the above and foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration expressed and in the capacity therein stated, I have signed my hand and seal of office on this 1 day of March 2018.

[Signature]

Notary Public

**For Departmental Use Only**

Case#: ZBA2018-01

Project Mgr: DDR

Total Fee(s): 455.00

Payment Method: CK

Submittal Date: 03-13-18

[Signature]

**RACHEL D PRIDGEN**  
Notary Public, State of Texas  
Notary ID # 12886798-4  
My Commission Expires  
March 1, 2020





## CITY OF DECATUR, TEXAS

Development Services ★ 1601 S. State St ★ P.O. Box 1299 ★ Decatur, TX 76234 ★ www.decaturntx.org

### Board of Adjustment Application Checklist

#### General Requirements:

- ☐ A universal application form and the appropriate fees.
- ☐ A letter of explanation/justification.
- ☐ Submit a total of five (5) copies of site plan (if applicable) for the property. These copies should be individually folded with drawing side out.
- ☐ A location map clearly indicating the site in relation to adjacent streets, distance to nearest intersection and other landmarks.
- ☐ Submit one (1) copy of proof of ownership (recorded property deed or current year tax statements).
- ☐ Submit documentation on any and all liens and lien holders of property.
- ☐ One (1) CD-ROM containing the general required documents in Adobe PDF format.
- ☐ I have reviewed the checklist and all submittals for completeness and accuracy. If application submittal is determined to be incomplete, additional fees may be assessed.

RECEIVED

MAR 13 2018

CITY OF DECATUR  
DEVELOPMENT SERVICES

Pat M. Long  
Signature

3/12/18  
Date

#### Content of the Letter of explanation/justification for a Zoning Variance:

I understand that I am applying for a variance from the Zoning Ordinance of the City of Decatur and that this variance can only be granted if I prove hardship by meeting four of the conditions below. I also understand that financial or self-induced hardship cannot be considered for granting a variance. Below I explain exactly how I meet these four conditions.

1. The requested variance does not violate the intent and spirit of the ordinance:

The Existing building has a 15' building line along Brady Street.

2. Special conditions of restricted area, shape, topography or physical features exist that are peculiar to the subject parcel of land and are not applicable to the other parcels of land in the same zoning district:

No Future Plans to build in setback.

3. The hardship is in no way the result of the applicant's action:

The building has had current configuration for the past 35 years.

4. The interpretation of the provisions in this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions:

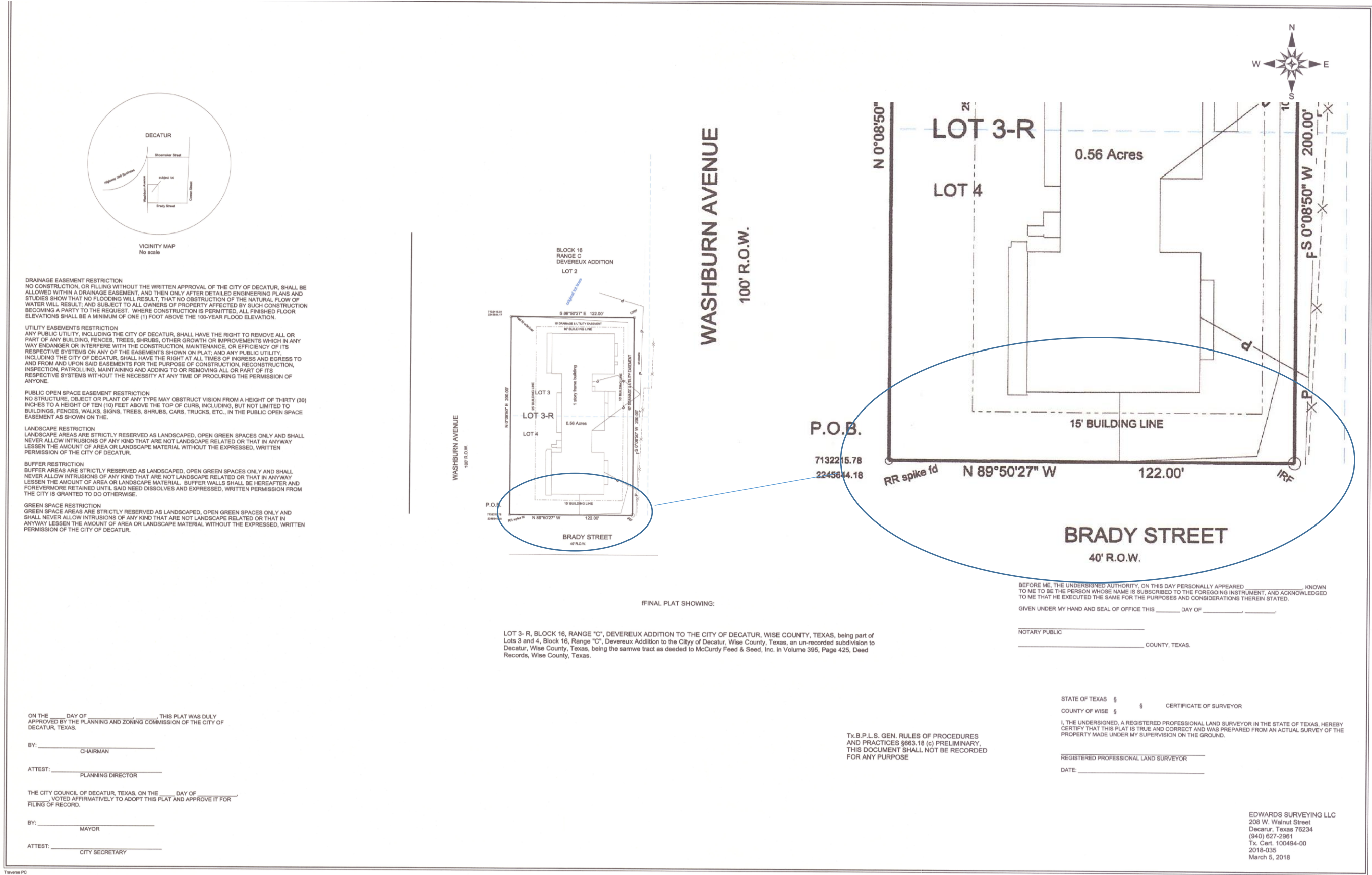
The request is to provide setback relief for existing setback.

Form Updated 03/2012

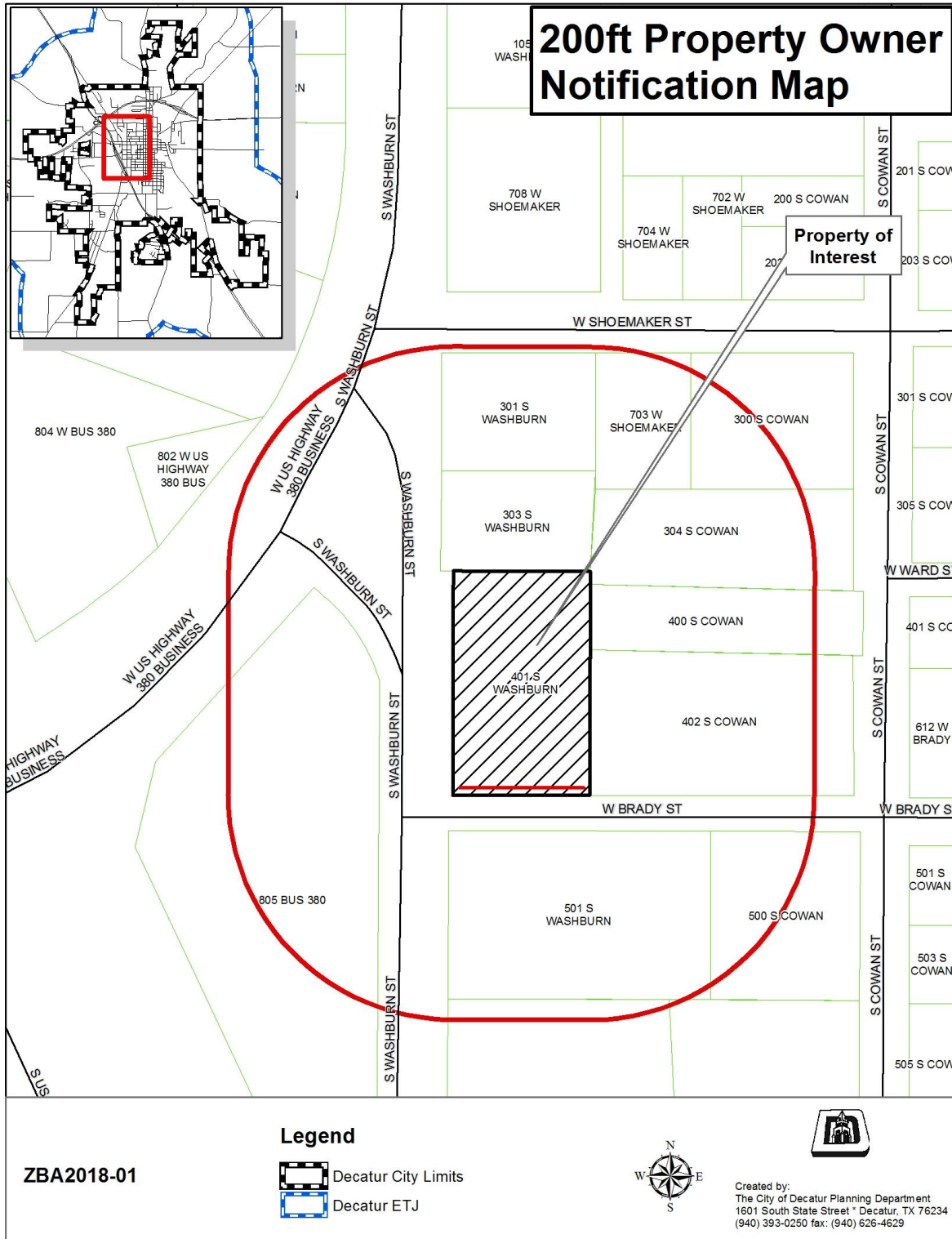
*BR*

Attachment 3

# Proposed Plat Exhibit



## 200' Notification Map and Property Owner Responses





**None to date**

## Memo from City Engineer



**City of Decatur  
City Engineer**

# Memo

**To:** Shanna Smith  
Dedra Ragland

**Cc:** Greg Hall  
Katherine Griffith

**From:** Earl Smith, P.E., CFM, City Engineer

**Date:** 03/23/2018

**Re:** ZBA 2018-01; Variance Request, Front Yard Setback; Lot 3R, Block 16, Range C, Devereux Addition; 401 S. Washburn Ave.

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### Comments on Variance Request:

#### • 4.3.3 Authority of Board of Adjustment

The Board of Adjustment shall have the authority, subject to the standards established in Chapter 211 of the Texas Local Government Code, as amended, and those established herein, to exercise powers and to perform duties including the following:

- (2) *Variances and Special Exceptions.* Authorize, in specific cases, a Variance or Special Exception (see [4.3.5](#) Appeals to the Board of Adjustment and [4.3.7](#) Special Exceptions) from the terms of this Ordinance if the variance or special exception is not contrary to the public interest and if, due to special conditions, a literal enforcement of the Ordinance would result in unnecessary hardship, and so that the spirit of this Ordinance is observed and substantial justice is done.

#### 4.3.6 Variances

##### *C. Criteria for Granting a Variance.*

##### (2) *Findings of Undue Hardship.*

(a) In order to grant a variance, the Board of Adjustment shall make findings that an undue hardship exists, using the following criteria:

- (i) Literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property;

**According to applicant, building has existed in the current location, unchanged for approximately 35 years. The structure causes no sight problems for traffic or impedes any views by neighboring properties.**

and

- (ii) The situation causing the hardship or difficulty is neither self-imposed nor is it a situation generally affecting all or most properties in the same zoning district;

**The building for which the variance is requested is existing and has existed for approximately 35 years. The structure causes no sight problems for traffic or impedes any views by neighboring properties.**

and

- (iii) The relief sought will not injure the permitted use of adjacent conforming property;

**The structure causes no sight problems for traffic or impedes any views by neighboring properties.**

and

- (iv) The granting of a variance will be in harmony with the spirit and purpose of these regulations.

**Area surrounding property is built out; no future subdivision of properties in area is practical. The property has existed for approximately 35 years for various businesses, causing no known problems to neighboring structures.**





# CITY OF DECATUR, TEXAS

Development Services ★ 1601 S. State Street ★ Decatur, TX 76234 ★ (940) 393-0250 voice ★ (940) 626-4629 fax

## STAFF REPORT

*April 16, 2018 – Board of Adjustment Meeting*

**TO: (Zoning) Board of Adjustment**                      **CASE: ZBA2018-03**  
**FROM: Dedra D. Ragland, AICP, Planning Director**   **APPLICANT: Buddy Miller on behalf of Todd Burger**  
**DATE: March 29, 2018**                      **REQUEST: Front Yard Setback 1303 S. Hatcher**

### Subject:

Board to hear public input and consider taking action on a request from Mr. Buddy Miller's request, on behalf of Mr. Todd Burger, for a special exception from the City of Decatur's Zoning Ordinance regarding front yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.3 "SF-2, Single-Family Residential District," Item D(1)(b)(c) "Area Regulations," to reduce the required front yard setback twenty-five feet (25') to sixteen and two-tenths feet (16.2'), a reduction of eight and eight-tenths feet (8.8') along S. Hatcher Street at the northeast intersection of Hatcher and East Park Street. The subject property is proposed as Lot 3A, Block 76, South Decatur Addition and is more commonly referred to as 1303 S. Hatcher St., City of Decatur, Wise County, Texas.

### Case Notes:

In March 2018, Mr. Buddy Miller met with Building Official Wayne Smith to discuss an addition to a home located at 1303 S. Hatcher. Building Official Wayne Smith informed Mr. Miller the property was not properly platted. Upon review of the site plan, it was discovered that the existing building does not meet the City's front yard setback requirements. The applicant is requesting that the required twenty-five feet (25') minimum front yard setback be reduced to sixteen and two-tenths feet (16.2'), a reduction of eight and eight-tenths feet (8.8').

### Legality:

According to the Texas Local Government Code, the Board of Adjustment can legally authorize variations to the Zoning Ordinance subject to the conditions listed below (§211.008.010). Each case before the board must be heard by 75 percent of its members (§211.008.d), and the board can only authorize a variation from the terms of the Zoning Ordinance with a concurring vote of 75 percent (§211.009.c).

### Conditions for Approval:

The applicant must meet all of the following four conditions to be legally granted a variance.

#### Financial or self-induced hardship cannot be considered:

1. The requested variance does not violate the intent and spirit of the ordinance.
2. Special conditions of restricted area, shape, topography or physical features exist that are peculiar to the subject parcel and are not applicable to other parcels of land in the same zoning district.
3. The hardship is not the result of the applicant's actions, and
4. The interpretation of the provisions in this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions.

Per Section 4.3.7 "Special Exceptions," B. "Authority," of the Zoning Ordinance: The Board of Adjustment is authorized to hear and decide a Special Exception to the zoning regulations which is not permitted by right in a particular Zoning District because of potential adverse effect, but which if controlled in the particular instance as to its relationship to the neighborhood and to the general welfare, may be

permitted by the Board of Adjustment. Special Exceptions may only be considered and granted by the BOA if expressly authorized by C(2), and in accordance with the substantive and procedural standards of this Ordinance.

**Deciding Factors:**

The Board of Adjustment reviews the application and the response to the four conditions, and then hears the case to determine if the applicant qualifies. If the Board feels the applicant has met the stated conditions, then the Board may approve the variation as long as it meets these criteria (§211.009.a.3):

- 1) The variation is not contrary to the public interest.
- 2) The variation is due to special conditions.
- 3) A literal enforcement of the ordinance would result in unnecessary hardship.
- 4) The spirit of the ordinance is observed and substantial justice is done.

**The Board of Adjustment must also review the special exception application per the following criteria:**

**“C. Criteria for Granting a Special Exception.**

- (1) Requests for a Zoning Special Exception.
  - (a) The Board of Adjustment may grant a special exception in accordance with the Zoning Ordinance upon written request of the property owner.
  - (b) The Planning Director shall process and review special exception applications.
- (2) Circumstances for which Special Exceptions are Authorized. When in the Board of Adjustment's judgment, the public convenience and welfare will be substantially served and the appropriate use of the neighboring property will not be substantially injured, the Board of Adjustment may, in specific cases, after public notice and public hearing and subject to conditions and safeguards as the BOA determines appropriate, authorize the following special exceptions to the regulations herein established:
  - (a) Nonconforming Uses or Structures.
  - (b) Residential Setback Encroachments. For existing single-family residential and duplex (two-family) structures that were legally constructed prior to the effective date of this Ordinance, the Board of Adjustment may authorize a Special Exception for any Structure that was constructed over a setback line established by this Ordinance.
  - (c) Off-Street Parking Requirements.
  - (d) Fencing.”
- (3) *Conditions Imposed.* In granting Special Exceptions under this Section, the Board of Adjustment may impose such conditions as are necessary to protect adjacent property owners and to ensure the public health, safety and general welfare, including but not limited to conditions specifying the period during which a nonconforming use may continue to operate or exist before being brought into conformance with the provisions of this Ordinance.

**Recommendation:**

***Staff has the following finding:***

1. The requested special exception **does not** violate the intent and spirit of the ordinance. The home was built in 1950 and has been in the current configuration and location without objection or concern from the surrounding neighbors. The reduced building setback does not adversely impact surrounding property owners.
2. There **are** special considerations of physical features that are peculiar to the subject parcel that are not applicable to other parcels of land in the same zoning district. There are several homes in the surrounding vicinity that appear to encroach on various setbacks. The reduced building setback does not appear to be an uncommon phenomenon or a condition that adversely affects the surrounding neighbors. House is believed to have been built in the 1950s and prior to the adoption of the original zoning regulations in 1976 and the subdivision regulations in the mid-1980s. Prior to 1976, there were no

zoning regulations and no setback requirements.

3. The hardship **is not** a result of the applicant's action. The house was purchased in its current configuration. Mr. Miller is wanting to "flip" the home in order to sell it. He plans to demolish the current addition that is encroaching in the rear yard setback and add an addition in its place without encroaching in the rear yard setback. Property owner cannot obtain a building permit until the setback encroachments have been rectified.
4. The interpretation of the provisions in this ordinance **could** deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions. Before any additional permits can be issued, the property must be properly platted. Before the property can be platted, the building encroachment in the setback must be resolved.

Twenty-two (22) property owners were notified. Staff has received no responses in favor of, opposed to or neutral to the request.

### **Options:**

#### **Recommend approval:**

From the evidence, testimony and plans presented, I move that the Board grant the request ZBA2018-03 to allow for a special exception from the City of Decatur's Zoning Ordinance regarding front yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.3 "SF-2, Single-Family Residential District," Item D(1)(b)(c) "Area Regulations," to reduce the required front yard setback twenty-five feet (25') to sixteen and two-tenths feet (16.2'), a reduction of eight and eight-tenths feet (8.8') along S. Hatcher Street at the northeast intersection of Hatcher and East Park Street. The subject property is proposed as Lot 3A, Block 76, South Decatur Addition and is more commonly referred to as 1303 S. Hatcher St., City of Decatur, Wise County, Texas.

#### **Recommend approval with conditions:**

From the evidence, testimony and plans presented, I move that the Board grant the request ZBA2018-03 to allow for a special exception from the City of Decatur's Zoning Ordinance regarding front yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.3 "SF-2, Single-Family Residential District," Item D(1)(b)(c) "Area Regulations," to reduce the required front yard setback twenty-five feet (25') to sixteen and two-tenths feet (16.2'), a reduction of eight and eight-tenths feet (8.8') along S. Hatcher Street at the northeast intersection of Hatcher and East Park Street. The subject property is proposed as Lot 3A, Block 76, South Decatur Addition and is more commonly referred to as 1303 S. Hatcher St., City of Decatur, Wise County, Texas. The conditions being as follows:...

#### **Recommend denial:**

From the evidence, testimony and plans presented, I move that the Board deny the request ZBA2018-03 to allow for a special exception from the City of Decatur's Zoning Ordinance regarding front yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.3 "SF-2, Single-Family Residential District," Item D(1)(b)(c) "Area Regulations," to reduce the required front yard setback twenty-five feet (25') to sixteen and two-tenths feet (16.2'), a reduction of eight and eight-tenths feet (8.8') along S. Hatcher Street at the northeast intersection of Hatcher and East Park Street. The subject property is proposed as Lot 3A, Block 76, South Decatur Addition and is more commonly referred to as 1303 S. Hatcher St., City of Decatur, Wise County, Texas. Denial is based on the following findings:...

#### **Recommend postponing consideration:**

From the evidence, testimony and plans presented, I move that the Board postpone consideration of request to a date certain, and requesting additional information for the request ZBA2018-03 to allow for a special exception

from the City of Decatur's Zoning Ordinance regarding front yard setbacks. Specifically, applicant is requesting a special exception to the City of Decatur Code of Ordinances, Appendix B. "Zoning," Article 5. "Zoning Districts," Section 5.1 "Zoning Districts Established," Subsection 5.1.3 "SF-2, Single-Family Residential District," Item D(1)(b)(c) "Area Regulations," to reduce the required front yard setback twenty-five feet (25') to sixteen and two-tenths feet (16.2'), a reduction of eight and eight-tenths feet (8.8') along S. Hatcher Street at the northeast intersection of Hatcher and East Park Street. The subject property is proposed as Lot 3A, Block 76, South Decatur Addition and is more commonly referred to as 1303 S. Hatcher St., City of Decatur, Wise County, Texas. Additional data being as follows:...

**Attachments**

1. Location Map
2. Application, Checklist and Letter of Intent
3. Proposed Plat Exhibit
4. 200' Property Owner Notification Map and Responses
5. Memo from City Engineer

Attachment 1  
**Location Map**





# Application, Checklist and Letter of Intent

**CITY OF DECATUR DEVELOPMENT SERVICES UNIVERSAL APPLICATION**

Check box to indicate application type *Incomplete applications will be rejected*

<input type="checkbox"/> Annexation Petition <input type="checkbox"/> Amending Plat <input type="checkbox"/> Comprehensive Plan Amendment <input type="checkbox"/> Conveyance Instrument <input type="checkbox"/> Design Standards Variance <input type="checkbox"/> Final Plat	<input type="checkbox"/> Gas Well Development Plat <input type="checkbox"/> Plat Extension-Final or Preliminary <input type="checkbox"/> Preliminary Plat <input type="checkbox"/> Replat <input type="checkbox"/> ROW Use Agreement <input type="checkbox"/> ROW Abandonment/ Closing	<input type="checkbox"/> Special Use Permit <input type="checkbox"/> Subdivision Variance <input type="checkbox"/> Zoning Change <input checked="" type="checkbox"/> Zoning Variance (ZBA) <input type="checkbox"/> Vacation Plat <input type="checkbox"/> Other
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**Application Requirements:** Signed application form, application fees, Copy and filing fees, Proof of Ownership (Recorded Deed or current tax statements), required # of plats / plans, signed checklist and a PDF of all documentation.

**PROJECT INFORMATION:** ☒ Residential ☐ Commercial Is this property platted? ☐ Yes ☐ No  
 Project Name: 1303 S. HATCHER Total Acres: 0.196  
 Project Address (Location): Lot 3A Blk 76, South Decatur Add. Parcel(s) Tax ID R #: \_\_\_\_\_  
(LOT, BLOCK & SUBDIVISION OR SURVEY WITH METES & BOUNDS DESCRIPTION, SEALED BY A LICENSED SURVEYOR)  
 Parent Project Name/Number: N/A Parcel(s) Tax ID GEO #: \_\_\_\_\_  
 Brief Description of Project: Residential Rehab/Home Renovation ETJ ☐ Yes  
 Please state the identity of any individual(s), or other entities that presently hold a lien upon the real estate which is the subject of this request: no lien holders / Property is owned Lien holder / mortgagee must also sign plat for filing of record.  
 Existing Use: MDR Existing Zoning: SF2 # of Existing Lots: 1 # of Existing Units: 1  
 Proposed Use: ✓ Proposed Zoning: ✓ # of Proposed Lots: ✓ Proposed Units: ✓

**APPLICANT INFORMATION:** Please circle your preferred method of contact.  
 Applicant / Company: Beaded & Bundled, LLC Email: tbbits1@gmail.com  
 Address: 1709 CR 913 Phone: 405 207 6086 Fax: 817.704.4662  
 City: Burleson State: TX Zip: 76028

Property Owner: Beaded & Bundled, LLC Todd Burger Email: tbbits1@gmail.com  
 Address: 1709 CR 913 Phone: 405 207 6086 Fax: 817 704 4662  
 City: Burleson State: TX Zip: 76028

Key Contact/Company: Rising M Construction Miller Email: risingm.construction@gmail.com  
 Address: 2548 CR 4680 Phone: 682 478 8596 Fax: \_\_\_\_\_  
 City: Boyd State: TX Zip: 76025

**(MUST BE SIGNED FOR ALL APPLICATIONS)** Letter of authorization required if signature is other than property owner and a letter of authorization is required from lienholder/mortgagee, if applicable.  
 I hereby certify that I am the owner of the property identified in this application; or, that I am the authorized agent of the owner of said property; and that I am authorized to act in their behalf, and that this application, to the best of my knowledge and belief, is true and correct.  
 Signature of Property Owner: Todd Burger Signature of Lien Holder: N/A  
 SIGNATURE OF PROPERTY OWNER SIGNATURE OF LIEN HOLDER

**PLAT WAIVER (MUST BE SIGNED FOR ALL PRELIMINARY, FINAL & REPLATS)**  
 I waive the statutory time limits in accordance with Section 212 of the Texas Local Government Code.  
 Signature of Property Owner: Todd Burger Signature of Lien Holder: N/A  
 SIGNATURE OF PROPERTY OWNER SIGNATURE OF LIEN HOLDER  
 Known to me to be the person(s) whose name is subscribed to the above and foregoing instrument, and acknowledged to me that they executed the same for the purposes and consideration expressed and in the manner therein stated. Given under my hand and seal of office on this 21st day of March, 2018.  
Donna L Hawkins  
 Notary Public  
 STATE OF TEXAS  
 ID# 177113-0  
 Comm. Exp. March 8, 2021

**For Departmental Use Only**  
 Case#: ZBA2018-03  
 Project Mgr: DR  
 Total Fee(s): 455.00  
 Payment Method: 1008  
 Submittal Date: 3/21/18  
 Accepted By: FM



## CITY OF DECATUR, TEXAS

Development Services ★ 1601 S. State St ★ P.O. Box 1299 ★ Decatur, TX 76234 ★ www.decaturtx.org

### Board of Adjustment Application Checklist

#### General Requirements:

- ☐ A universal application form and the appropriate fees.
- ☐ A letter of explanation/justification.
- ☐ Submit a total of five (5) copies of site plan (if applicable) for the property. These copies should be individually folded with drawing side out.
- ☐ A location map clearly indicating the site in relation to adjacent streets, distance to nearest intersection and other landmarks.
- ☐ Submit one (1) copy of proof of ownership (recorded property deed or current year tax statements).
- ☐ Submit documentation on any and all liens and lien holders of property.
- ☐ One (1) CD-ROM containing the general required documents in Adobe PDF format.
- ☐ I have reviewed the checklist and all submittals for completeness and accuracy. If application submittal is determined to be incomplete, additional fees may be assessed.

Todd Burger  
Signature

3/20/18  
Date

#### Content of the Letter of explanation/justification for a Zoning Variance:

I understand that I am applying for a variance from the Zoning Ordinance of the City of Decatur and that this variance can only be granted if I prove hardship by meeting four of the conditions below. I also understand that financial or self-induced hardship cannot be considered for granting a variance. Below I explain exactly how I meet these four conditions.

1. The requested variance does not violate the intent and spirit of the ordinance:

The property is an older established property that was developed prior to the existance of the setback ordinance. We are requesting to maintain the current front setback at 16.2 feet.

2. Special conditions of restricted area, shape, topography or physical features exist that are peculiar to the subject parcel of land and are not applicable to the other parcels of land in the same zoning district:

The Property is an already established home that has been in existance in the area for decades. The house is already encroaching the setback ordinance which can not be changed.

3. The hardship is in no way the result of the applicant's action:

The Property was purchased in the described condition.

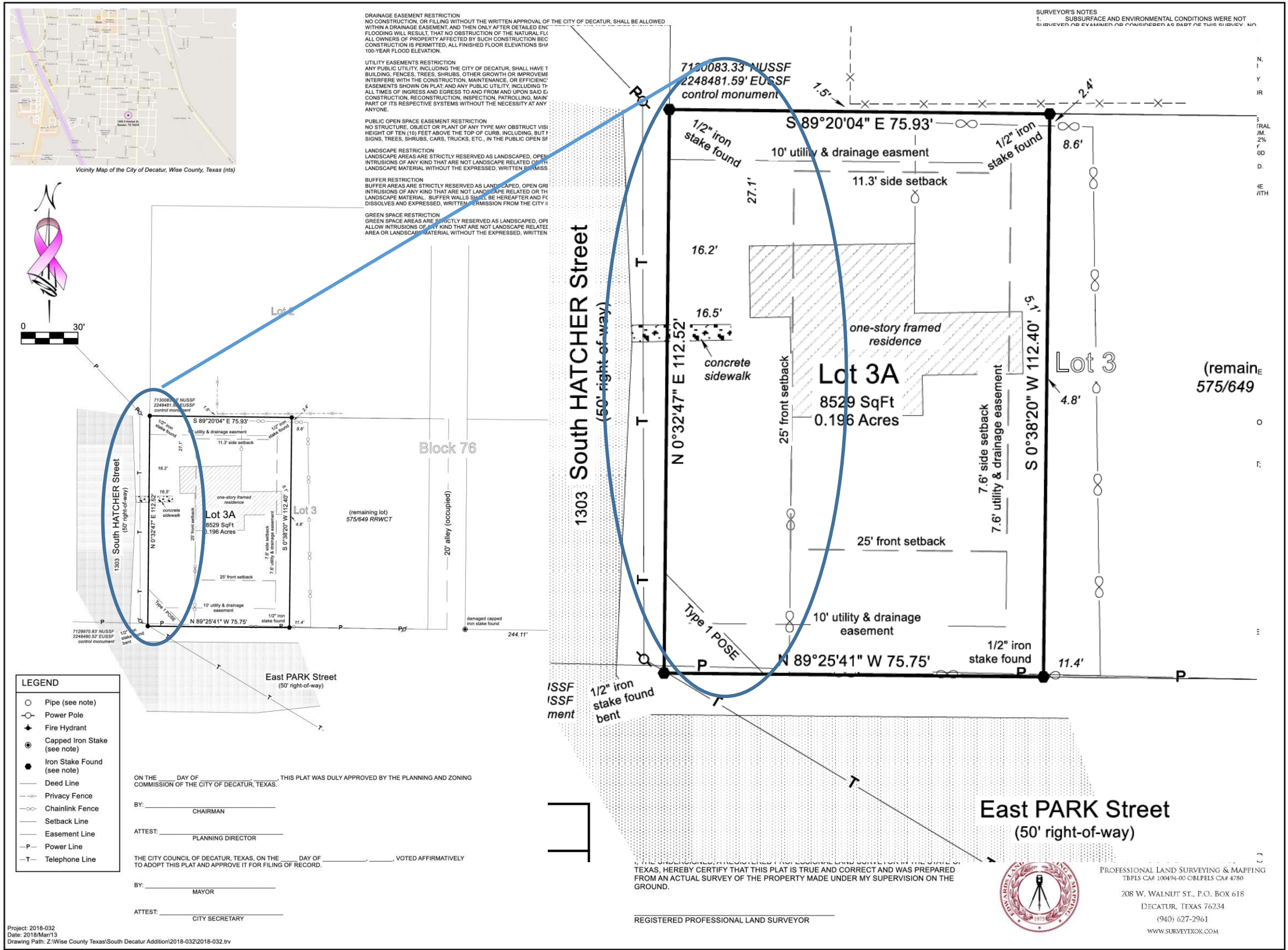
4. The interpretation of the provisions in this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district that comply with the same provisions:

Enforcement of this ordinance would deprive the applicant the rights commonly enjoyed by other properties in the same zoning district because others are able to rehabilitate their home in its current location.

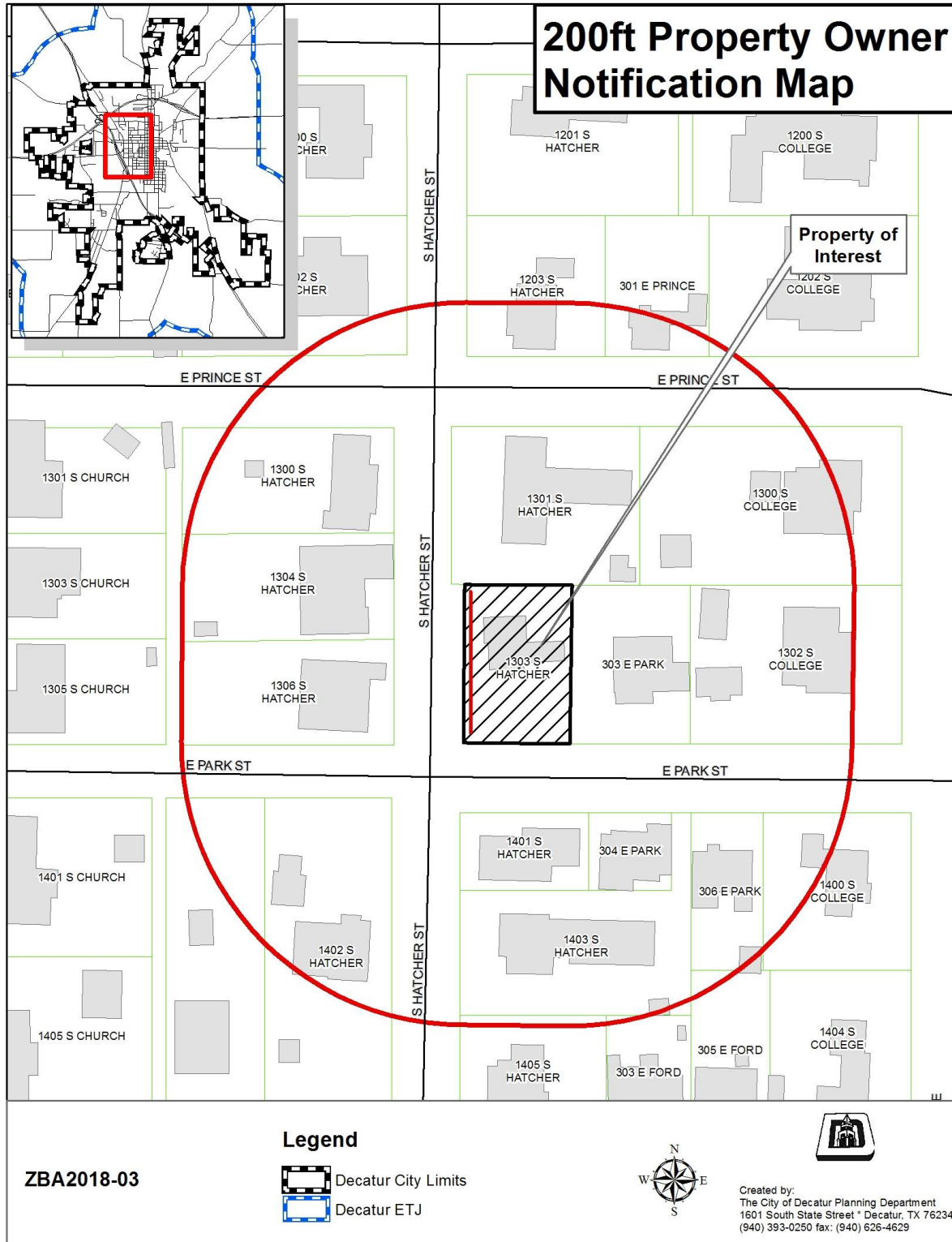
Form Updated 03/2012



Attachment 3  
Proposed Plat Exhibit



## 200' Notification Map and Property Owner Responses



**None to date**



## Memo from City Engineer



**City of Decatur  
City Engineer**

# Memo

**To:** Shanna Smith  
Dedra Ragland

**Cc:** Greg Hall  
Katherine Griffith

**From:** Earl Smith, P.E., CFM, City Engineer

**Date:** 03/28/2018

**Re:** ZBA 2018-03; Variance Request, Front Yard Setback; Lot 3A, Block 76,  
South Decatur Addition; 1303 South Hatcher

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### Comments on Variance Request:

- 4.3.3 Authority of Board of Adjustment

The Board of Adjustment shall have the authority, subject to the standards established in Chapter 211 of the Texas Local Government Code, as amended, and those established herein, to exercise powers and to perform duties including the following:

- (2) *Variances and Special Exceptions.* Authorize, in specific cases, a Variance or Special Exception (see [4.3.5](#) Appeals to the Board of Adjustment and [4.3.7](#) Special Exceptions) from the terms of this Ordinance if the variance or special exception is not contrary to the public interest and if, due to special conditions, a literal enforcement of the Ordinance would result in unnecessary hardship, and so that the spirit of this Ordinance is observed and substantial justice is done.
- 4.3.6 Variances
- C. Criteria for Granting a Variance.*
- (2) *Findings of Undue Hardship.*
    - (a) In order to grant a variance, the Board of Adjustment shall make findings that an undue hardship exists, using the following criteria:
      - (i) Literal enforcement of the controls will create an unnecessary hardship or practical difficulty in the development of the affected property;

**Encroachment into front yard setback is caused by an existing single family house. The structure causes no sight problems for traffic or impedes any views by neighboring properties.**

and

- (ii) The situation causing the hardship or difficulty is neither self-imposed nor is it a situation generally affecting all or most properties in the same zoning district;

**The house for which the variance is requested is existing and has existed for an unknown amount of time. The structure causes no sight problems for traffic or impedes any views by neighboring properties.**

and

- (iii) The relief sought will not injure the permitted use of adjacent conforming property;

**The structure causes no sight problems for traffic or impedes any views by neighboring properties and conforms to the appearance of the neighborhood.**

and

- (iv) The granting of a variance will be in harmony with the spirit and purpose of these regulations.

**Area surrounding property is built out; no future subdivision of properties in area is practical. The property has existed as a single family home for an unknown amount of time and generally conforms to the neighborhood.**